

Motto:
"Without work, all life goes rotten. But
when work is soulless, life stifles and dies."
(Albert Camus)

THE PUBLIC CLERKS AND THEIR PERCEPTION TOWARDS WORK IN THE ROMANIAN NATIONAL ECONOMY

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Abstract. *The present paper aims to treat the legal aspects of the public clerk in Romania, generated by the hystorical and political context of the time. So, it speaks about a statute of the public clerk in a comunist regime and also in a democratic one, building a parallel with Eastern Germany, an ex comunist state, which brings a lot of similarities with the existing regime of our country in that time.*

Keywords: labour code, employee, employer, public clerk, public clerk's statute.

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1. Introduction

The work is a given of the man, although every day the people that work do not think at something else that the possibility to work less, but to be paid more. It is an ideal, a dream and the contemporary reality contradicts them, but leaves behind some ideas, among which the most important are:

- a) the work is the only thing that honours a man, if it is done honestly;
- b) the work, in order to be accepted by any type of ideology, cannot be approved without reserves if it does not bring a social profit;
- c) from a certain level, the work is not more than a sequence of responsibilities, which, doesn't matter how wrong they are made, they do not attract big punishments according to the negative effects produced.

Why do these ideas appear? Obviously, not only from an incorrect political vision on the human life, but more often from an historical observation: until the XVIII century, normal people, that took the whole burden of the states through the raw work that they made did not exist for the history, like they did not exist after that also, at least in a real proportion.

Practically, just the noble ones, the ones that had free time and could become anytime kings, cardinals or generals were not only the ones that worked effectively , but they were the only ones that were accepted without reserves by the community, no matter the laws broken.

From here appeared the wish of the simple man to become not only a noble, but a man with servants, with total legal immunity. The big controversies start from here and appear in moments of social crisis, when usually the ones from the top of the political hierarchy wish to extend their legal immunity.

2. Reflections regarding work

The work can be seen as a natural process, because every activity of the humans assumes energy consumption for achieving a goal, from providing food, to building a shelter and providing the minimum security of the space they spend most of their time, mostly the night.

I) The work was defined in the doctrine of the working law (the branch of law dealing with the study of this important human activity) as:

- 1) A first sense is the one of productive activity (to make a work efficient, important) and also the result of this activity (a successful work);
- 2) The second sense, is a work place (having a work, a job) and also the workers assembly (the work opposite to the capital);
- 3) The work can be perceived as an action, free, creative, but also as an obligation;
- 4) The term can mean pain and suffering (physical or moral), or even torture.

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In Romanian language the word work comes from the Slavonic (“monka”), meaning hard work or torture, because in Russian the word work is “rabota”, which gave the Romanian language the word “roboteala” - that means hard work, or difficult work painstakingly made.

II) Today the work is done not only with low-tech mechanical means (exclusively), but also by means likely to identify more intellectual contribution of the one provided, as well as those who created them (the instruments).

But the most important aspect is the question: for whom the work is done? The question should not be confused with these one: who pays for the work done, because there are situations where a person does work for a person, but the payment is made by another person.

Therefore, we identify two types of employers: on one hand, the state can play an active role in the economy, from different perspectives (our study does not contain elements of ideology, so we will not comment on the situation in question) on the other hand, all persons of private law, both physical and legal. Practically, every law subject is able to hire a person to provide paid work, which, by their repetitive nature, represents the essence of work.

Although both legal entities (public law and private law) may employ persons to perform work, there is a major difference in terms of the purpose for which specific activities are fulfilled:

a) in the case of the private law, essential is the resource gathering as an expression of a necessary profit, the rentability is a matter sine qua non;

b) the public law has a social role by essence, the profit is not necessary at any cost. In this sense, the doctrine highlighted that the legal regime of the administrative persons is different by essence.

That is why the doctrine was always interested in a comparison between the legal regime of the employees in the private law sector, relative to people who always look in the public administration activities that make a profit (indirect particularly) to the whole society. Thus, including branches of law governing the legal situation of the two different types of activities provided are: employment law for private law cases, with some particularities, and the administrative law for the ones in the field of public administration and here with some particularities.

III) In the private law, the situation is simple: the labour law does not regulate any type of work, but only the subordinate one, by regulating the situation of the one that works in favour and under the authority of another person, in exchange of a salary.

In the same time its object doesn't limit only at the work relation, it refers also at the legal reports (regarding for example the professional forming, the social dialog, the security and working health).

However, labour law does not seek personal work for himself (in household), and also not for the independent or self-employed.

IV) Under the report of the public law we emphasize that inside the central and local public administration authorities, more personal categories operate their activity, from the point of view of the legal status:

a) The officials, they being persons who meet various public dignitaries who have been elected or appointed and whose status is governed by different laws: ministers, secretaries of state, local elected officials (mayors, deputy mayors, local councillors, county councillors, presidents and vice presidents county councils);

b) The contractual personnel whose legal status is governed by what is called by the generic formula of "labour law", which evokes primarily the Labour Code, republished, and other special laws;

c) The public clerk, whose legal status is regulated by the law no. 188/1999, republished, with subsequent amendments, and the other laws governing specific legal statutes applying to different categories of public clerk.

V) It discloses the different situation of the public law, which has a much more favourable situation regulating on the way of the legal norms (and less positive of the employment contracts, which could easily be led to breach of certain rules prescribed by the legislature), and who knows not only in its specific category of labour law (taking over from it almost all the legislation) but also two other distinct types: officials and public clerks.

Thus, if employees are found in all major areas of law (private and public), public clerks and officials appear exclusively in the sphere of public law regulation, even if the private law institutions, but with public utility status can fulfil a social role similar to the administrative people.

VI) Trying to shape the legal regime differentiation between the three categories, we stated that the attempts to separate them have existed since the interwar period, when the Romanian public law doctrine shone, and was cited often in the French scientific publications.

Thus, the first law regulating the legal status of public clerk appeared in June 1923, the public clerk term is found in art. 1 of the Law on the Statute of public clerk, according to which "*the public clerk are Romanian people irrespective of sex, which fulfil a permanent public service (civil and ecclesiastical) to State, county, or institutions whose budget is subject to approval by Parliament, or municipal government or county councils.*"

The definition was criticized by the doctrine:

a) the naming of the public clerk must be done according to the law or regulation;

b) the public clerk must fulfil a permanent service;

c) to get a periodical salary;

d) the naming of the public clerk is done after the oath.

However, the specific reglementations of administrative law regarding this category of people are older, forcing us to a political excursion - historical parallel. Thus, the text of the 1866 Constitution said in the article 10 that: "*There is no distinction in the State class. All Romanians are equal before the law and ought to*

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contribute to the taxes and public duties. They alone are inadmissible in public functions, civil and military. Special laws shall determine the admissibility and promoting conditions in state functions. Foreigners cannot be admitted to public functions, only in exceptional cases.” As shown, this text covers not only the public clerk but also the officials. You can see that nothing is said about the work of private agencies, because it is the action area too vast to be governed by the fundamental law. The Constitution of 1866 was based on the Belgian model of 1831, with some features related to the presence of allogeneic among the intellectual blanket and bourgeois of the town, which are banned in the public clerk functions. This text, approved by the people, was also the debut of a long image conflict between the state and the Romanian people, on the one hand and a class of these allogens. In terms of the immunity of public clerk, the fundamental text of the law stated that *“No prior authorization is required to carry out criminal acts against public clerk for their administration injured parties, but leaving untouched the special rules on ministers settled”* (art. 29).

At the same time, in Europe a great state was created: Germany. Large military force led to the rapid formation of this state, that was put in the position to unify the old small German states, and one of the problems was the creation of a national public clerk corpus (the new state), most of the public clerk of the old states being dismissed, this being made on the basis of clear criteria, and those from the local administrations of the states having more success in the new regime, like the old officials. The constitutional text from 1866 remains also in 1923, when the fundamental law of the union was edicted. One provision is the novelty: *“Only they are admissible in public functions and dignities, civil and military. Special law will determine the status of public clerk”* (art. 8, par. 2).

As shown, it is being recognized the need for a framework law for public administration and its staff, this time bringing a very good administrative code. For comparison, post-revolutionary Romania has no administrative code now, and the status of public clerk was adopted with 8 years after the publishing of the new constitution (December 1991 - December 1999).

I) The authoritarian and dictatorial regimes have a characteristic: they bring new fundamental laws. In comparison, both Romania and Germany had a negative experience in this regard, with some features:

a) Germany had a constitution in Weimar, in 1919, that Hitler changed it implicitly but not expressly, the new constitution of the democratic state was published in 1949 by Adenauer;

b) Romania had an authoritarian regime (more gentle), but with a fundamentally new law in 1938. The article 27 of the Romanian Constitution stated that: *“Only the Romanian citizens are admissible in public functions and dignities, civil and military, taking account of the majority of the Romanian Nation State. Only Romanian people and the naturalized ones may acquire and hold title to all rural properties in Romania. Foreigners will only have the value of such property.”*

After 1945, Romania and the Eastern Germany (Democratic) enters a new world, which has as a consequence, in terms of official relationships - industrial enterprise employee type, was created an almost total identity between the two categories, both in terms of constitutional texts, and by labour codes that appear, driving under the influence of political doctrine at that time.

The constitution of the communist Romania is from 1948, 1952 and 1965 and the ones from eastern Germany (RDG/DDR) are from 1949 and 1968.

We will present the Romanian texts that are relevant for the reglementation: The 1948 text refers to the generic public clerk, providing that minorities have the right of public clerk from among them (art. 24). The communist practice did not use them to win the loyalty of all citizens of a state, irrespective of ethnicity, but to oppose better the minority majority. The constitution of 1952, closer to the 1949 East German one, refers to state officials, but also to work, by specifying its nature and those that provide:

Art. 77. The People's Republic of Romania citizens are guaranteed the right to work, meaning the right to acquire a guaranteed and paid work according to the quantity and the quality of the work.

The right to work is guaranteed by the existence and development of the socialist formation of the national economy by increasing the continuous and systematic forces of production in the Romanian People's Republic, by removing the possibility of economic crisis and the liquidation of unemployment.

Art. 78. The People's Republic of Romania citizens have the right to rest.

The right to rest is provided by: establishing the working day of 8 hours for workers and officials, reducing the working hours for certain professions under 8:00 with heavy working conditions and job shops with very heavy conditions, the establishment of paid annual leave for all workers and officers, making available to working people to rest at homes, sanatoriums and cultural institutions.

Art. 79. Romanian People's Republic citizens are entitled to material security in old age, in case of illness or disability.

This right is guaranteed by the wide development of social insurance of workers and officials, at the expense of the state, through free medical assistance for those who work and by making available climatic spas to the working people. The constitution of 1965 does not bring many differences from the 1952 one, only the text arrangement is different. In these times, two laws were more important, which stated the differences between public clerk and employees of industrial enterprises: the labour codes 1950 and 1972.

However, this unification of the legislation was specific to the communism, where a great identification was made not only between employees and public clerk, but also between public and private property owned by the state.

Although there were many similarities in the legal status of the two categories of staff (collective agreement, unions, etc.) differences appeared related to the training capacity of the two categories of people, especially on age, access to the profession, probe periods, some specific ways of training and professional development.

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Note that the code provisions adopted in 1970 have a more flexibility than the one in 1950, although they are largely identical in major law for the matter in question. It is introduced - in modern spirit - an oath of the socialist state to state officials on taking.

After 1990, the democracy brings new fundamental laws - in Romania, and Germany's unification, unexpected a few months before, hence, a strong change in the administrative apparatus in both countries. What followed - in the two geographical areas considered - the unemployment was developed, a decrease in the number of employees, but also state officials. However, the differences between the two states are summarized as follows:

a) The Eastern Germany received a legislation in their entire legal system, suddenly, under the law of unity, with the financial assistance and experience of the West Germans could move quickly to a democratic sense of professionalism in public administration in the lands in the east;

b) Romania has created by itself the legislation and also the financial resources for its implementation, including the political problems, the biggest being related to failing to timely some important laws because that hindered the politicians.

The new labour code appears only in 2003, his most serious issue of regulating ideological work (job losses) - paradigm change in the late 2010 bringing a reprint of it, after modifying this aspect. It passes from such a heaviness in the dismissal (model 2003), to its flexibility (model 2011).

The labour legislation was modified in reality by:

- Possibility to work abroad (extended from January 2001);
- Demographic problems;
- Reducing the national industrial base;
- Union leaders and thus compromise the trade union movement;
- Rediscovering the state force, seen as one entity to protect life (basic level of survival) for employment and industrial facilities closed during 1997 to 2000.

These factors have not always operated directly, but they were strongly felt in the labour market, under the penetration of corporate culture in Bucharest.

Unlike the common law employment, where the new Civil Code takes effect, as the common law for the entire private law in the public clerk that will highlight the status of public clerk was adopted later, because politics always feared a body of powerful officials.

Thus, article 2 of Law No. 188/1999, republished, has set the framework for the public clerks:

1) The public function means all duties and responsibilities established by law for the purposes of prerogatives of public power by the central government, local government and autonomous administrative authorities.

2) The public official is the person named according the law, in public office. The person who was dismissed from public office and is the body's reserve capacity of public clerk keep their public clerk status.

3) The activities of public clerk, which involves the exercise of public power, are:

- a) the enforcement of laws and other regulations;
 - b) drafting laws and other public authority or institution specific regulations and ensure their endorsement;
 - c) drafting policies and strategies, programs, studies, analysis and statistics needed for policy and implementation and enforcement of laws necessary documentation in order to achieve competence of the authority or institution;
 - d) counselling, testing and public internal audit;
 - e) management of human resources and financial resources;
 - f) the collection of budgetary debts;
 - g) public authority or institution representing interests in its relations with individuals or legal public or private, at home and abroad, within the powers established by public authority or institution head, and representation in court of public authority or institution that operates;
 - h) carrying out activities in accordance with the strategy of informatization of the public administration.
- 4) The public functions are provided in the Annex to this Law.
- 5) In this law, all public clerk in administrative authorities and the autonomous public authorities and institutions of central and local government form the public clerk body.

After interpreting these rules, it is clear that:

- a) public clerk are only those which are included in the text of a law or another legal act of lower power cannot create the legal relationship of public office;
- b) specific activities are related to the investing public power institutions which carry out their daily benefits;
- c) general and special legal status are fixed by law, they have no opportunity to negotiate rights and obligations, except in minor issues (access to culture, some internal communication media, etc.).

Since the public service is in the interest of the state, it is normal for its values to be included in the basic acts of public officials (art. 3):

“The principles underlying the exercise of public functions are:

- a) legality, impartiality and objectivity;*
- b) transparency;*
- c) efficiency and effectiveness;*
- d) responsibility, in accordance with the law;*
- e) guidance to citizens;*
- f) stability public office;*
- g) hierarchical subordination.”*

A major difference relatively appears at transparency, because there will never exist a compete clause in the report of a public service, which can occur at an employee of private law. Thus, public clerk recruitment for well-paid positions in the private sector may be useful! The separation between public clerk, officials, and certain special categories of professionals - in fact, all public clerk, but with special status, they are not contracted staff, appears in art. 6:

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The provisions of the present law do not apply:

a) employee contract personnel services within the authorities and public institutions engaged in secretarial, administrative, protocol, management, maintenance, repair and maintenance, security and other personnel who do not exercise public power prerogatives. People who occupy these positions have the status of public clerk and labour laws apply;

b) staff employees who, based on personal trust, the dignitary's cabinet;

c) the judiciary;

d) teachers;

e) persons appointed or elected to a public function.

Two aspects are fundamental in the legal status of public clerk, which separates the legal status of employees in the private sector:

a) Conditions of Employment in the public, different than the situation under labour law: must be at least age 18 years, and studies completed, at least high school, high school diploma. From here, some professional stability of public clerks, this can lead to an increase in quality for their benefits only through the experience.

b) The legal regime of obligations and sanctions that characterize different public service in many special laws of their quality of bringing offenders to punishment increases.

Although there are many legal situations governed somewhat similar, the most important is the financial situation, because, under the Romanian law since 1990, has been dropped that the single wage economy (because the labour code does not make much distinction between public clerk and industrial workers).

Thus, the private sector could establish their own financial situation, can recruit in any environment, but public environment cannot do this. Although there is a flexibility here, the economic crisis led not only painful amputations in the public service, but returned to the fore a unique wage law, which was done in 2010.

3. Conclusions and future reflexions

The employed staff of private economic environment and public officials is the expression of human problems: cannot live without stable work submitted by the commodity to be obtained and thus the results are obvious.

However, the goals of the two types of activities performed require greater differentiation between legal rules and the situation stated in everyday reality. Thus, the flexibility demonstrated by a difficult political-economic situation is filled with technological explosion of the last 30 years, making the entire human race into something that nobody knows where it will stop.

For a more thoroughly social, however, requires a combination of elegant but strong private sector skills and the mobility with the stability and the professionalism of the public environmental bureaucracy. Disregarding the alliance attracts not only economic collapse but also the states.

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